

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fortin (WIPO Publication 2000/72768 A1) in view of Alby (U.S. Patent 6,241,730).

Fortin discloses a device comprising: a first rod member (35) having a first end (38); a second rod member (36) having a second end (39); a mechanical coupler (300) connecting the first rod member to the second rod member and allowing adjustment of the positions of the first rod member and the second rod member such that a distance between the first end of the first rod member and the second end of the second rod member can be controlled to straighten the spine of a patient, wherein at least one of the first rod member (35) and the second rod member (36) is serrated (FIG 14), and wherein the first rod member and the second rod member are curved (FIG 14). Additionally, the second end (39) includes a hook member configured to engage a rib (FIG 14).

However Fortin fails to disclose first and second dampening members coupled to the first and second ends (38, 39) of the first and second rod members (35, 36). Alby discloses a device comprising a rod member (4B) having a dampening member (7), with a first end of the dampening member (4Aa) coupled to a first end of the rod member (4Ba) and a second end of the dampening member (4A) configured to be coupled to a

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first bone structure, wherein the damping member (7) comprises: a rigid cylinder (8); a first elastic member (7A) disposed within the rigid cylinder; and a second elastic member (7A) disposed within the rigid cylinder, wherein the first end of the first rod member (4Ba) includes an enlarged distal portion (11) disposed between the first elastic member and second elastic member (FIG 1). Additionally, the first rod member (4B) can pivot within the first damping member (7; Column 2) to adjust the alignment of the first rod member with respect to a longitudinal axis of the first damping member.

It therefore would have been obvious to one skilled in the art to modify the device taught by Fortin, by having a dampening member attached to the first and second ends (38, 39) of the first and second rod members (35, 36) as is taught by Alby (see FIG 1, 4), because the dampening device provides the advantage of aiding in dampening stresses and strains experienced by vertebrae when they are withstanding compression, extension, and lateral bending that occur during the operation of the device and during bodily movements, when the device is connected to vertebrae and/or the rib cage (Column 1-2). Furthermore, the rigid rods taught by Fortin do not provide means of dampening the stress and strain experienced by the intervertebral discs and bodies; therefore use of the dampening device taught by Alby in combination with the rigid rods taught by Fortin allows for the problem presented by Fortin to be overcome.

Response to Arguments

3. Applicant's arguments with respect to claims 13-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELANA B. FISHER whose telephone number is (571)270-3643. The examiner can normally be reached on Monday through Friday from 8:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Elana B Fisher/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733